

**DSS ADMINISTRATIVE LETTER
CHILD WELFARE SERVICES CWS-AL-06-11**

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

**ATTENTION: CHILD WELFARE SERVICES PROGRAM ADMINISTRATORS / MANAGERS
CHILD WELFARE SERVICES SUPERVISORS
CHILD WELFARE SERVICES SOCIAL WORKERS**

DATE: August 18, 2011

SUBJECT: CHILD WELFARE LEGISLATIVE CHANGES FOR 2011

EFFECTIVE DATE: AS INDIVIDUALLY SIGNED INTO LAW OR EFFECTIVE DATES

I. BACKGROUND

During each of the North Carolina General Assembly's session, legislative proposals that may impact child welfare are monitored. When legislation is passed, the Division and our Child Welfare Attorneys review the session's legislative impact with input from the School of Government, and offers a summary or guidance as needed. A Legislative Update (July, 2011) located at: http://dailybulletin.unc.edu/summaries11/documents/social_services_update_2011.pdf from UNC has been prepared by Janet Mason.

II. PURPOSE

This Administrative Letter is to provide information regarding legislative actions during the 2011 North Carolina General Assembly's long session. Please discuss any new or revised legislation in its entirety with your agency's attorney(s) or legal staff to understand the impact that each legislative change may have within your county. These and all other statutes can be accessed through the North Carolina General Assembly website (at <http://www.ncleg.net/>). The Division will continue to evaluate the implications that these legislative changes will have on policy, if any. Should a change to policy be required, the change will be included in any upcoming manual revisions.

III. LEGISLATIVE SUMMARY

[Session Law 2011-295 \(HB 382\)](#)

Effective Date: October 1, 2011 and applies to actions filed or pending on or after that date.

G.S. § 7B-200 - Jurisdiction, subsection (4a) is amended to add reinstatement of parental rights as a proceeding where the court also has exclusive original jurisdiction.

G.S. § 7B-507 - Reasonable efforts is rewritten and now allows the court to order a specific placement after consideration of the department's recommendations if it is in the child's best interest. It also modifies the law to allow the requirements of G.S. § 7B-907 to be considered if the court ceases reunification efforts at a permanency planning hearing that was duly and timely noticed as a permanency planning hearing.

G.S. § 7B-600(b) - Appointment of Guardian is amended so that the restrictive criteria for terminating guardianship when the court has made guardianship the permanent plan apply only if the guardian is a party to the proceeding.¹

G.S. § 7B-801 - Hearing is amended to create a new subsection providing for the entering of consent orders at adjudication, disposition, review, or permanency planning when all parties are present or represented, the juvenile is represented by counsel, and the court has made sufficient findings of fact.

G.S. § 7B-807(a) - Adjudication is rewritten to address the common practice of allowing the court to accept stipulations of fact for adjudication by reducing the facts to writing, signed by each party stipulating to them or by reading the facts into the record with an oral statement of agreement from each party stipulating to them.

G.S. § 7B-901 - Dispositional Hearing requires the court to inquire about missing parents and paternity at the dispositional hearing. It allows the court to provide in the order specific efforts to determine the identity and location of any missing parent and to establish paternity. The court is also required to inquire about efforts made to identify and notify relatives as potential resources for placement and support.

G.S. § 7B-905(a) - Dispositional Order requires that another hearing be scheduled at the first session of court for juvenile matters when a dispositional hearing order has not been entered in the 30-day timeframe to explain the reason for the delay and needed clarifications for the order.

G.S. § 7B-908(c) - Post Termination of Parental Rights' Placement Court Review has been rewritten to include that the court make specific findings of fact regarding certain considerations at post-termination review hearings, including whether the current placement is in the juvenile's best interest. G.S. § 7B-908(f) is removed and is rewritten as a new section, G.S. § 7B-1112.1.

G.S. § 7B-1001 - Right to Appeal is amended to conform to the Rules of Appellate Practice.

G.S. § 7B-1105(b) - Preliminary Hearing; Unknown Parent allows the court to order the petitioner in a termination of parental rights proceeding to conduct a diligent search for an unknown parent instead of the court appointing a guardian ad litem to conduct the search.

G.S. § 7B-1106(b)(5) - Issuance of Summons is amended to provide that the petitioner, not the clerk, will mail notice of date, time, and place of any pretrial hearing and the hearing on the petition in a termination of parental rights case.

G.S. § 7B-1108(a) - Answer or Response of Parent; Appointment of Guardian ad Litem for Juvenile clarifies that only a district judge may grant an extension of time to answer or respond to a termination of parental rights petition.

G.S. § 7B-1109(f) - Adjudicatory Hearing on Termination specifies that the rules of evidence apply to terminations of parental rights hearings.

G.S. § 7B-1110(a) - Determination of Best Interests of the Juvenile authorizes the court at disposition in a termination of parental rights proceeding to consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the child's best interest. The court is also required to make written findings about those criteria.

G.S. § 7B-1112(1) - Selection of Adoptive Parents rewrites and amends G.S. § 7B-908(f) to require county departments of social services to notify the guardian ad litem within 10 days of selecting prospective adoptive parents and before the filing of the adoption petition. If the guardian ad litem disagrees with the selection, they may file a motion within 10 days and schedule the case for a hearing.

¹ See Mason (2011), UNC School of Government, [Juvenile Law and Social Services Law, Legislative Update](#), Number 7.

The department of social services may not change the juvenile's placement unless the time period for filing a motion has passed and no motion has been filed. The court will consider the recommendations of both the agency and the guardian ad litem as it relates to the selection of adoptive parents. The court will determine if the proposed placement is in the juvenile's best interest.

G.S. § 7B-1114 - Reinstatement of Parental Rights is a new section that establishes parameters for reinstatement of parental rights. Circumstances in which the procedure will be available, beginning October 1, 2011, are narrow:

- A motion to reinstate parental rights may be filed only by the juvenile, the guardian ad litem attorney or a DSS that has custody of the child.
- The juvenile must be at least 12 years old or, if the juvenile is younger than 12, the motion must allege extraordinary circumstances requiring consideration of the motion.
- The juvenile must not have a legal parent, must not be in an adoptive placement, and must not be likely to be adopted within a reasonable time.
- The order terminating parental rights must have been entered at least three years before the motion is filed, unless the juvenile's attorney advocate and the DSS with custody stipulate that the juvenile's permanent plan is no longer adoption.

If a motion could be filed and a parent contacts DSS or the juvenile's guardian ad litem about reinstatement of the parent's rights, DSS or the guardian ad litem must notify the juvenile that the juvenile has a right to file a motion for reinstatement of parental rights. If the juvenile does not have a guardian ad litem when a motion is filed, the court must appoint one.

The section also states what the court will take into consideration in determining whether reinstatement of parental rights is in the juvenile's best interest and should become their permanent plan. If the court determines that reinstatement is the permanent plan, the court may order visitation as well as trial placement. The court will either dismiss or grant a motion for reinstatement of parental rights within 12 months from the date the motion to reinstate parental rights was filed.

[Session Law 2011-332 \(SB 300\)](#)

Effective Date: October 1, 2011

G.S. § 7B-1102(b1) - Pending Child Abuse, Neglect, or Dependency Proceedings is added to require that if a parent who is served with a motion to terminate parental rights and who has an attorney of record, then a copy of the motion and notice served on the parent must also be sent to the parent's attorney.

[Session Law 2011-326 \(SB 148\)](#)

Effective Date: June 27, 2011

G.S. § 7B-602(a) - Parent's Right to Counsel and 7B-1110.1(a) Determination of Best Interests of the Juvenile are amended to specify that the appointment of provisional counsel shall be pursuant to rules adopted by the Office of Indigent Defense Services.

[Session Law 2011-237 \(HB 246\)](#)

Effective Date: June 23, 2011

G.S. § 48-9-104(d) - Release of Identifying Information; Confidential Intermediary Services is rewritten to include that an agency providing confidential intermediary services determines that a lineal ascendant of a deceased person who is the subject of a search is deceased, then the agency may also obtain a copy of the deceased lineal ascendant's death certificate and provide it to the person who requested the services.

[Session Law 2011-383 \(SB 644\)](#)

Effective Date: June 27, 2011

Session Law 2011-383 states that a redetermination of a child's eligibility for vendor payments under any adoption assistance agreement established prior to July 1, 2011 shall not be required by the Division of Social Services. Vendor payments are not made an entitlement by this act.

In response to Session Law 2011-383, the Adoption Assistance Agreement ([DSS-5013](#)) and the Adoption Assistance Agreement Amendment ([DSS-5307](#)) have been modified to require a redetermination of vendor payments each state fiscal year. Counties shall utilize these forms effective 8/1/2011. Additionally, the Adoption Assistance Vendor Payment Instructions for Providers ([DSS-5115](#)) and the Adoption Assistance Vendor Payment Request Form ([DSS-5112](#)) have been modified to clarify the documentation necessary in approving vendor payments according to policy ([Chapter XIII-Child Welfare Funding Manual; Section 1600; XII](#)).

If you have any questions about this letter, please contact your Children's Program Representative or the Child Welfare Section at (919) 733-4622.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Kelley".

Kevin Kelley, Interim Chief
Child Welfare Services

Attachments:

[DSS-5013](#) Adoption Assistance Agreement

[DSS-5112](#) Adoption Assistance Vendor Payment Request Form

[DSS-5115](#) Adoption Assistance Vendor Payment Instructions for Providers

[DSS-5307](#) Adoption Assistance Amendment